

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

(San Rafael, California)

NORTH BAY SATURN GROUP, INC. d/b/a
SATURN OF MARIN 1/

Employer

and

MACHINISTS AUTOMOTIVE TRADES DISTRICT 190,
LOCAL LODGE NO. 1414, AFL-CIO

Petitioner

20-RC-17537

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board; hereinafter referred to as the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding, the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.
2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein. 2/
3. The labor organization(s) involved claim(s) to represent certain employees of the Employer. 3/
4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act. 4/
5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act: 5/

All full-time and regular part-time service technicians 6/ and trainees employed by the Employer at its San Rafael, California facility; excluding all other employees, including service writers/advisors, detailers, parts employees, guards, and supervisors 7/ as defined in the Act.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit(s) found appropriate at the time and place set forth in the notice of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit(s) who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll

OVER

period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **Machinists Automotive Trades District 190, Local Lodge No. 1414, AFL-CIO**.

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses which may be used to communicate with them. **Excelsior Underwear, Inc.**, 156 NLRB 1236 (1966); **NLRB v. Wyman-Gordon Company**, 394 U.S. 759 (1969). Accordingly, it is hereby directed that with 7 days of the date of this Decision 3 copies of an election eligibility list, containing the full names and addresses of all the eligible voters, shall be filed by the Employer with the undersigned who shall make the list available to all parties to the election. **North Macon Health Care Facility**, 315 NLRB No. 50 (1994). In order to be timely filed, such list must be received in the Regional Office, 901 Market Street, Suite 400, San Francisco, California 94103, on or before **August 6, 1999**. No extension of time to file this list shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the **Executive Secretary, 1099-14th Street, NW, Washington, DC 20570-0001**. This request must be received by the Board in Washington by **August 13, 1999**.

Dated July 30, 1999

at San Francisco, California

/s/ Robert H. Miller
Regional Director, Region 20

- 1/ The Employer's name appears as amended at the hearing
- 2/ The parties stipulated, and I find, that the Employer is a California Corporation with four places of business located, respectively, in San Rafael, Santa Rosa, Fairfield, and Vacaville, California, where it is engaged in the retail sale and service of new and used automobiles. During the 12-month period preceding July 20, 1999, the Employer herein, derived gross revenues in excess of \$500,000 at its San Rafael facility and received at that facility goods valued in excess of \$50,000 directly from points located outside the State of California. Based on the parties' stipulation to such facts, it is concluded that the Employer is engaged in commerce and that it will effectuate the purposes and policies of the Act to assert jurisdiction herein.
- 3/ The parties stipulated, and I find, that the Petitioner is a labor organization within the meaning of the Act.
- 4/ The parties stipulated that there is no collective-bargaining agreement covering the employees in the unit sought herein, and that there is no contract bar to this proceeding.
- 5/ The Petitioner seeks to represent a craft unit comprised of all full-time and regular part-time service technicians and trainees employed by the Employer at its San Rafael, California facility. Contrary to the Petitioner, the Employer contends that two service technicians employed at that facility, namely, Julio Escobar and Carlos Garcia, do not qualify as craft employees and that all employees employed in the Employer's parts and service departments (service writers/advisers, detailers, and parts employees), including those at its facilities in Santa Rosa and Fairfield, should be included in the unit, as opposed to just those at the San Rafael facility.

The Employer operates four automobile dealerships that sell Saturn automobiles. Three of them—the ones located in San Rafael, Santa Rosa, and Fairfield, and named, respectively, Saturn of Marin, Saturn of Santa Rosa, and Saturn of Fairfield —also service Saturn automobiles. The fourth dealership—the one located in Vacaville and known as Saturn of Vacaville—does not. All four dealerships are located within 20 to 30 miles of one another. The Employer's corporate offices are located in Santa Rosa, on the same premises as the Saturn of Santa Rosa dealership.

The Employer's top official is Chief Executive Officer Robert C. Benson; its president and general manager is Todd Barnes. The other corporate-wide officials identified in the record are Business Manager Amy Shulze, Used Car Manager Mike Castro, and Marketing Manager Jeriann Jones. The corporate office also has an office staff that handles such functions as preparing and processing accounts receivable, accounts payable, automobile sales contracts, regulatory paperwork, and personnel-related paperwork, such as tax and immigration forms, insurance documents, and other such matters, all of which functions are handled by the Employer on a centralized basis at its corporate office, rather than at the local dealership

level. The headquarters staff is not involved in the day-to-day sales and servicing operations of any of the local dealerships.

Two of the dealerships--Saturn of Santa Rosa and Saturn of Fairfield—are headed on the sales side by general sales managers and on the service side by fixed operations managers. They are the liaisons between those dealerships and the corporate-wide officials. Also, under the Employer's hierarchy, the general sales manager for the Fairfield facility is in charge of the Employer's Vacaville operation. At Saturn of Marin, the sales side of the operation is headed by a general sales manager but, unlike at the facilities in Santa Rosa and Fairfield, leadership on the service side is divided between a service manager/service team leader, Tom Schneider, who oversees all but the parts operation in that department, and the parts manager/team leader, Brenda Burton-Smith, who separately supervises that facility's parts operation.

The Employer's San Rafael facility has a service department consisting of seven service technicians, including Escobar and Garcia; five detailers; two service writers/advisers; and one parts employee. All but the parts employee are supervised by Service Manager Schneider. The parts employee, as noted, is separately supervised by Parts Manager Burton-Smith.

The service technicians are responsible for performing mechanical repair work on Saturn vehicles brought to the Employer's facility for repair. They diagnose engine and mechanical problems and perform general engine and mechanical repair work. The service writers/advisers are the service department's customer liaisons. The service advisers identify the customer's concerns, input this information into the computer and give the customer an estimate of the cost of the repair. They then print the repair order and give it to the customer for review and authorization to perform the repair. The service advisers then assign the repair order to one of the service technicians to perform the repair. The detailers wash vehicles, buff cars, do paint touch ups, and similar unskilled work. They work in a wash bay area adjacent to but separate from the service rack area where the service technicians work. One of the detailers also shuttles customers. The parts employee works at the parts counter in the Employer's facility and is responsible for providing stock parts when requested by a service technician and for ordering and stocking parts.

All parts and service department employees are eligible for the same benefits (health plan, vacation, holidays and 401(k) plan) and are subject to the same work rules and policies. The service technicians and detailers share a locker room, and all of employees use the same lunch/break room.

Analysis: In making unit determinations, the Board has noted that there is nothing in the Act which requires that the unit for bargaining be the only appropriate unit, the ultimate unit, or the most appropriate unit. Rather, the Act requires only that the unit be "appropriate".

Overnite Transportation Co., 322 NLRB 723 (1996). A union therefore is not required to seek representation in the most comprehensive grouping of employees unless "an appropriate

unit compatible with that requested does not exist.” *P. Ballantine & Sons*, 141 NLRB 1103 (1963). See also *General Instrument Corp. v NLRB*, 319 F.2d 420, 422-423 (4th Cir. 1963), cert. denied 375 U.S. 966 (1964).

Focusing on the craft unit petitioned for here, the Board has found that a separate unit of mechanics performing work such as that performed by the technicians at issue here constitutes a craft unit appropriate for collective bargaining purposes. See *Fletcher Jones Chevrolet*, 300 NLRB 875, 875-877 (1990); *Dodge City of Wauwatosa*, 282 NLRB 459 (1986). In so finding, the Board, in *Dodge City of Wauwatosa*, determined that the mechanics at issue in that case were “a distinct and homogeneous group of highly trained and skilled craftsmen who are primarily engaged in the performance of tasks that are not only different from the work performed by the other service department employees, but that require the use of substantial specific craft skills, as well as specialized tools and equipment.” 282 NLRB at 460.

Applying those principals to the record in this case, I find that a unit limited to the Employer’s service technicians is an appropriate unit. Like the mechanics in *Dodge City of Wauwatosa*, the Employer’s service technicians are “a distinct and homogeneous group of highly trained and skilled craftsmen who are primarily engaged in the performance of tasks that are not only different from the work performed by the other service department employees, but that require the use of substantial specific craft skills, as well as specialized tools and equipment.” 282 NLRB at 460.

One indicator of that distinct status is the fact that the service technicians at the Employer’s San Rafael facility, who are the focus of this proceeding, work in their own separate area of that facility. That area consists of seven service racks and one alignment rack, and the service technicians are the only employees in the San Rafael facility that perform their normal duties in that area. The other service department employees may have occasion to enter that area to talk to the service technicians, but only the service technicians perform their normal duties there.

The service technicians also are the only employees who diagnose mechanical problems and perform repairs. The Employer attempted to show that the service writers also perform some mechanical-type work, but the evidence in that regard showed, at best, that the repair-type work they did was simple, minor, and infrequent, such as occasionally replacing wiper blades or license plate light bulbs. See *Fletcher Jones Chevrolet*, 300 NLRB at 875-877, where the Board found that, although the service advisors at issue in that case may, on occasion, assist a customer in minor repairs such as installing wiper blades or locking wheel nuts, those tasks are not sufficient to compel their inclusion in a unit of mechanics. The Employer also attempted to show that the detailers perform work related to that of the service technicians, but the record showed that their work is confined to simple tasks such as washing vehicles and moving them about the Employer’s facility. Only the service technicians were shown to perform diagnostic and mechanical work, and only the service technicians perform any kind of repair work as a part of their regular duties.

Further distinguishing the service technicians from the other employees is the fact that they are the only ones required to have their own tools. In the case of at least one of the service technicians, Ronald Willits, his current investment in tools is approximately \$30,000, and even the most junior service technicians appear to have at least \$1,000 worth of their own tools. The Employer does not provide any of the tools normally required by the service technicians, such as wrenches and other commonly-used tools. Instead, the service technicians must use their own tools for most of the work they perform. The only tools provided by the Employer consist of expensive, sophisticated devices, such as diagnostic computers. Although the Employer attempted to show that tool ownership is not a prerequisite for employment as a service technician, the record showed otherwise. Thus, in the only example given of a service technician being hired, namely, Carlos Garcia, the unrefuted testimony of the Employer's witness, Ronald Willits, reflects that tool ownership was a requisite in that case. Moreover, the Employer's General Manager, Todd Barnes, was unable to cite even one example of a service technician being hired who did not own his own tools.

The record additionally reflects that the service technicians have received substantial specialized training in their field of work. Much of that training is provided by the Employer itself. Thus, when service technicians are first hired, they receive intensive 15-day training in Saturn repair work at Saturn's Spring Hill, Tennessee plant. Thereafter, they each receive annual training at a cost of \$15,000/year. In addition, all of the service technicians have pursued and received Automotive Service Excellence ("ASE") certification on their own with respect to at least some aspects of the mechanical work they perform for the Employer. Some of the service technicians have all or nearly all such ASE certifications currently attainable. Those that do not have all of the ASE certifications appear to be currently pursuing them with encouragement from the Employer, which reimburses them for the cost of each additional certification received. Although the service writers and parts employees also receive substantial training, that training is entirely distinct and separate from that received by the service technicians and does not involve any training with respect to the performance of diagnostic and mechanical work. As for the detailers, they receive no training at all. Indeed, the Employer's witness, Ronald Willits, expressed the view that essentially anyone could perform the detailers' duties.

Also indicative of the service technicians' status as a distinct and homogeneous group is the lack of evidence of job transfers within the San Rafael service department. No detailers have advanced to become service technicians, nor, so far as the record shows, have any parts employees or service writers transitioned to such positions. The progression for service technicians appears to be that they are hired as service technicians and remain as such, albeit at higher levels of pay as their skills improve.

Another factor distinguishing the service technicians from the other service department employees is their method of pay. Service technicians are compensated by means of an hourly wage, along with incentive pay (based on the completion of a particular task in less

time than that allotted under the Employer's job standards) and bonus points good toward the purchase of tools. In contrast, the service writers receive a salary along with sales commissions and cash incentive bonuses, whereas the detailers and the parts employees receive strictly an hourly wage, without bonuses or incentive pay. Moreover, as regards the parts employee at the Employer's San Rafael facility, he receives separate supervision from the other employees in the service department at that facility, for unlike the other employees in that department, he is not supervised by the service team leader at that facility but, instead, is separately supervised by the parts manager.

Although the record reflects that the service technicians receive the same benefits and are subject to the same work rules and employment policies as the other service department employees and, in the case of the service technicians, detailers, and service writers, work under the same supervision; I find that the factors which set the service technicians apart as a craft unit, i.e., their unique skills, training and specialized work, outweigh those other factors and warrant the service technicians inclusion in a separate craft unit. See Fletcher Jones Chevrolet, 300 NLRB at 875-877.

I also find unpersuasive the Employer's contention that the pattern of collective bargaining at other employers' service departments compels a unit consisting of the entire service and parts department. In support of that contention, the Employer introduced into evidence the master collective-bargaining agreement between the Petitioner and various auto dealerships in Santa Clara County, which includes service advisers and technicians within the same bargaining unit. However, the unrefuted testimony of the Employer's own witness, Jesse Juarez, also shows that in Contra Costa County, only two of thirty collective-bargaining agreements there include service writers/advisors in the same unit as service technicians. As for Marin, Sonoma, and Solano Counties, where the Employer's facilities are located, no evidence was presented with respect to the unit pattern in those counties. In any event, however, evidence regarding the practice elsewhere with respect to the composition of bargaining units is not determinative of the appropriateness of the petitioned-for unit here, given the evidence, discussed above, showing that unit to be appropriate. See Washington Palm, Inc., 314 NLRB 1122, 1128 (1994); J. O. Rhodes & Gilbert Corp., 106 NLRB 536, 538 fn. 7 (1953).

Having found, for the foregoing reasons, that a unit limited to the Employer's service technicians is an appropriate unit, I further find, contrary to the Employer's contention, that service technicians Julio Escobar and Carlos Garcia are properly includable in that craft unit. Despite issuing them business cards identifying them as service technicians, the Employer would exclude Escobar and Garcia on the basis that they lack the skill level and breadth of responsibilities necessary to qualify for inclusion in a craft unit consisting of the other service technicians employed at the Employer's San Rafael facility. The record, however, shows otherwise. Thus, while the Employer attempts to minimize Escobar's and Garcia's responsibilities by suggesting that they do little more than "lube, oil, and filter" work, the unrefuted testimony of Employer witness Ronald Willits shows that they do much more than that. In the case of Garcia, who is the least senior service technician, having been with the Employer for only four to six weeks, he does brakes, valve cover gaskets, alignments, and

engine flushing, in addition to the type of work cited by the Employer. Escobar, who has more seniority than Garcia, having been with the Employer for about three years, works on brakes, gaskets, motor mounts, struts, water pumps, and, according to Willits, “a lot of general mechanical repairs.” In fact, according to Willits, Escobar’s responsibilities have greatly increased in the past year, consistent with the experiences of the other service technicians, who also have seen their responsibilities increase with their increasing experience. Garcia currently has ASE certification with respect to automotive air conditioning and is taking technical training at Indian Valley College in order to receive other certifications. No testimony was presented regarding Escobar’s own specific certifications, but Willits’ testimony indicated that Escobar, also, was certified to at least some extent. Both employees work side-by-side with the other service technicians and sometimes together with them on the same automobiles. Both have their own tools. Willits valued Garcia’s tools as being worth at least \$1,000 and testified that Escobar “buys lots of tools, just like [Willits].” In any event, even assuming, despite the foregoing, that Escobar and Garcia had significantly less skill and responsibility than the other service technicians, the Board long has held that a craft unit “consists of a distinct and homogeneous group of skilled journeymen craftsmen, working as such, together with their apprentices and/or helpers.” *American Potash & Chemical Corp.*, 107 NLRB 1418, (1423 (1954)). See also *Dodge City of Wauwatosa*, *supra*, where the Board included lube and oil work employees in the craft unit. Accordingly, Escobar and Garcia are eligible for inclusion in the unit either as service technicians or, at the least, as trainees.

I further find, contrary to the Employer’s position, that a unit consisting only of the service technicians at the Employer’s San Rafael facility, as opposed to the service technicians at all of the Employer’s facilities, is appropriate. The general rule regarding multi-location versus single-location units is that a single-location unit is presumptively appropriate, unless the employees at the single location have been merged into a more comprehensive unit by bargaining history, or the single location has been so integrated with the other locations as to cause the single location to lose its separate identify. See *Kendall Co.*, 184 NLRB 847 (1970). Factors to be considered in that regard include the extent of the geographic separation of the sites, the extent of supervisory authority on the part of local management, the existence of any bargaining history on a broader basis, the extent of interchange or transfer of employees between sites, and the presence of another labor organization attempting to represent a more comprehensive unit. See *Bowie Hall Trucking*, 290 NLRB 41 (1988); *Executive Resources Associates*, 301 NLRB 400 (1991).

Here, although the geographic separation between the sites is not substantial, the other factors cited above indicate the appropriateness of a single-location unit. As regards supervision, the record indicates that all hiring, firing, disciplining, scheduling, work assignments, and pay decisions are made at the local level, subject, in the case of hiring, firing, and wage decisions, to the consent of the Employer’s top officials in Santa Rosa. Such consent appears to be routinely granted. Thus, the record shows that local managers determine the need for new employees and that, after apprising either CEO Benson or General Manager Barnes of that need, they then conduct the hiring process and determine

solely at the local level which candidates to hire. That decision is then relayed to the Employer's headquarters in Santa Rosa. The local managers also determine the compensation levels for the employees they hire and supervise. In that regard, General Manager Barnes testified that the local managers determine what they consider to be an appropriate level of compensation, after which they advise him of their determination. Barnes made no claim of ever countermanning such a determination. Moreover, Barnes conceded that the Employer has no established guidelines regarding the setting of compensation levels. Rather, each employee's compensation appears to be set on a case-by-case basis, based on the local manager's assessment of the particular employee's worth. With respect to firing decisions, Barnes testified that the local managers merely needed to "run it by" him.

There is no prior bargaining history that would dictate other than the presumptively-appropriate single-location unit. Nor does any other labor organization seek to represent a more comprehensive unit.

As for the extent of interchange or transfer of employees between sites, the record shows that extent to be insignificant. There do not appear to have been any permanent transfers of service technicians between locations. Moreover, the evidence indicates that temporary transfers have been voluntary and infrequent, occurring only in the case of what were described as emergencies, when a particular facility was severely short-staffed because of unforeseen circumstances. General Manager Barnes testified that, based on his review of the Employer's records, he was able to find only seven examples of such temporary transfers over a period dating back over four or five years. None of those transfers occurred in calendar year 1999, and none of the transfers involving service technicians appear to have been for more than a day. The evidence is undisputed that none of those transfers were scheduled in advance of the days when they occurred. Moreover, they resulted in significant inefficiencies that the Employer normally would seek to avoid, for, according to Ronald Willits, the service technicians transferred to the San Rafael facility ended up using the tools of the local service technicians, with which they were unfamiliar and were often unable to locate. Such unplanned and unforeseen emergency transfers fall well short of demonstrating any significant level of interchange such as to compel a multi-location unit.

Further reflective of the lack of significant integration between the Employer's facilities is the fact that, at one time, the Employer unsuccessfully attempted to integrate the operations at its various locations. Thus, the Employer initiated something called the Lebow Process to develop a plan for accomplishing that integration. After about six months of such planning, the Employer abandoned the process, having concluded that such integration was unfeasible.

Although, as discussed above, the record reflects that the service technicians receive the same benefits and are subject to the same work rules and employment policies as all of the Employer's other employees, I find that the factors supporting a single-location unit, i.e., the extensive supervisory authority on the part of local management and the minimal extent of integration and interchange or transfer of employees between sites, outweighs the

significance of the common work rules, policies and employee benefits and support the appropriateness of a single-location unit consisting only of the service technicians at the Employer's San Rafael facility.

- 6/ The parties stipulated, and I find, that service technician and shop foreman Nope Sawangwan is not a supervisor within the meaning of Section 2(11) of the Act. Accordingly, he will be included in the unit.
- 7/ The record demonstrates that both Service Manager Tom Schneider and Parts Manager Brenda Burton-Smith possess and exercise supervisory authority within the meaning of Section 2(11) of the Act, including the authority to hire, fire, and discipline, and to schedule, direct and assign work or, at the least, to effectively recommend such action. Accordingly, they will be excluded from the unit.

355-3350-0000
420-0642-0000
440-1760-9133